Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1995

CLARA REDDING, individually and as legal guardian of PATRICK LOUIS BELL, a minor

Petitioners

v.

INDEPENDENT SCHOOL DISTRICT NO. 33 OF CREEK COUNTY, OKLAHOMA, a/k/a BOARD OF EDUCATION, SAPULPA SCHOOL DISTRICT, STATE OF OKLAHOMA a/k/a SAPULPA MIDDLE SCHOOL; TIMOTHY LYNN HOPPE, an individual; DR. CHARLES B. DODSON; SUZANNE WILLIAMS; and JANE and JOHN DOES 1-25

On Petition For Writ Of Certiorari To The Oklahoma Court of Appeals, Division II Cert. denied by Oklahoma Supreme Court

---

PETITION FOR WRIT OF CERTIORARI

Thomas S. Evans OBA# 10642
Counsel of Record
EVANS LAW CENTER
P.O. Box 2646, Ponca City, OK 74602
(405) 762-2889

43 pp

ISSUES

1. Can a fourteen (14) year old mentally challenged special education student be denied access to the Courts under Oklahoma's Governmental Tort Claims Act when: 1) notice of intent to file a claim is timely sent, but apparently to the wrong place; and 2) the targeted political subdivision actually knew that a claim against them was to be filed and had already hired a law firm to defend the potential claim?

and

2. Did substantial compliance with the notice requirement take place when discussions about a lawsuit on behalf of the minor child occurred between the lawyers representing the parties?

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OFFICIAL OPINIONS

District Court of Creek County, dismissed action on December 13, 1995. The Court granted Appellee's Motion for Summary Judgment.

Oklahoma Division II Court of Appeal upheld the ruling by Creek County Court on March 5, 1996.

Oklahoma State Supreme Court denied certiorari on May 22, 1996.

JURISDICTION

(1) On December 13, 1995, the Honorable Judge Donald Thompson granted the Appellee's Motion for Summary Judgment and dismissed the claim of the Appellant.

(2) Appellants did not put forth a Motion for Rehearing at the trial court level, instead Appellant appealed directly to the Oklahoma Supreme Court, which assigned the case to Oklahoma Court of Appeals, Division II.

(3) The Appellants rely upon the United States Constitution amendments Five (5) and Fourteen (14) for review by this Court. These were first brought up in arguments during the hearing by the Appellee, as well as in Appellee's first Appeal Brief to the Oklahoma Court of Appeals, and in Appellee's Petition for Certiorari to The Oklahoma Supreme Court, whereby granting this Court jurisdiction. Supreme Court Rule 10(C) grants this Court the authority to review State Court decisions which decide important questions of federal law.

(4) Pursuant to Rule 29.4(C) the Appellant will send to the Oklahoma State Attorney General, a copy of 28 U.S.C. §2403(B) as well as a co-copy of this Brief, so as to inform them the constitutionality of an Oklahoma Law is potentially going to be reviewed by this Court.

CONSTITUTIONAL PROVISIONS RELIED UPON

The Constitutional Provisions which are relied upon by the Appellants in this case stem from due process which are set forth in the United States Constitutional Amendments Nos. Five (5) and Fourteen (14). Amendment No. Five (5) states as follows:

> "No person shall be held for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." U.S. Const. Amend. 5.

Amendment No. 14 states as follows:

> **Section 1. Citizens of the United States.**
>
> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein

privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. Representatives--Power to reduce apportionment.

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3. Disqualification to hold office.

No person shall be a Senator or Representative in Congress, or Elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Sec. 4. Public debt not to be questioned--Debts of the Confederacy and claims not to be paid.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss of emancipation of any slaves; but

all such debts, obligations, and claims shall be held illegal and void.

Sec. 5. Power to enforce amendment.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.
U.S. Const. Amend. 14

PETITION FOR WRIT OF CERTIORARI

COME NOW the Appellants, Clara Redding, as legal guardian of Patrick Louis Bell, and hereby move that this Court grant Certiorari in the above styled case, for the following reasons:

1. The Trial Court erred in its granting of Appellee's Motion for Summary Judgment on October 23, 1995; subsequently, the Oklahoma State Court of Appeals erred in upholding said decision with the Oklahoma Supreme Court denying certiorari on May 22, 1996.

2. Said errors were based upon Appellee's Motion for Summary Judgment for failure to comply with Oklahoma Governmental Torts Claim Act, 51 O.S. §151 et seq., even though the Appellants showed substantial compliance with said act.

3. Due to the Trial Court's error and subsequent Appeal Court's error, the Appellants due process rights were violated.

STATEMENT OF FACTS

This action stems from a series of sexual molestations suffered by minor/student Patrick Louis Bell by Timothy Lynn Hoppe, a special education instructor's aid from the Sapulpa Middle School. Appellant Bell was a student in Appellee Hoppe's care. These numerous acts took place prior to and on November 8, 1993.

After gaining knowledge of the sexual improprieties of Appellee Hoppe, Appellant Redding, who is the legal guardian of Bell, removed Bell from the Sapulpa Middle School and retained as her attorney Gary Richardson. On January 26, 1994, Mr. Richardson sent a Tort Claim Notice addressed to the Sapulpa School District, c/o Office of Public Affairs, Purchasing Division, Office of Risk

Management Administrator. On February 8, 1994, in a letter from Appellants original attorney, Mr. Richardson, to the Superintendent of the Sapulpa Middle School, Appellee Dr. Charles Dodson, there is a reference to a meeting between the Appellant, Appellant's attorney, and Appellee Dodson, which included a discussion concerning a potential lawsuit. Appellee had retained counsel by the name of Mr. Doug Mann, who on several occasions had discussed with Richardson a lawsuit being filed on behalf of the Appellant Mr. Bell against the Appellee Sapulpa School District and Appellee Tim Hoppe. (Affidavit of Gary Richardson attached hereto in Appendix as Exhibit "A").

On May 10, 1994, Appellant Redding terminated her contract with Mr. Richardson, and shortly thereafter retained the services of attorney Thomas S. Evans as her counsel. On October 18, 1994, a Petition for Negligence was filed on behalf of Appellant Redding against the Appellees, and it should be duly noted that the Petition was filed within one year of Appellant Redding learning of the sexual molestation by Appellee Hoppe and thereby filing took place before the statutory limitations set forth in the Oklahoma Governmental Tort Claims Act.

On April 11, 1995, the Appellees entered a Motion to Dismiss or Alternative, Motion for Summary Judgment on the basis that the Appellants had not complied with the notice requirements of the Oklahoma Governmental Tort Claims Act. Said Motion was subsequently granted on December 13, 1995. The Appellants appealed, and on March 5, 1996, the Oklahoma State Court of Appeals Division II upheld the Trial Court's decision. The Appellants then asked for a Writ of Certiorari by the Oklahoma Supreme Court, said writ was subsequently denied on May 22, 1996. Appellants now ask that this Court review and grant Certiorari.

FIRST REASON FOR REVIEW

THE OKLAHOMA GOVERNMENTAL TORT CLAIM'S ACT 51 O.S. §151, ET SEQ. VIOLATED APPELLANT'S DUE PROCESS RIGHTS OF HIS DUEL PROTECTIVE STATUS.

When a given practice is so unfair as to deny due process is always a question of federal constitutional law. Cronnon v. State of Alabama, 557 F.2d 472 (C.A. 5th Cir. 1977), appeal after remand, 587 F.2d 246, cert. denied, 99 S. Ct. 1542, 440 U.S. 974, 59 L.Ed.2d 792 (C.A. 5th Cir. 1979). In the case at hand, the Appellant contends that the provisions set forth in Oklahoma's Governmental Tort Claims Act, 51 O.S. §151 et seq., meet this rule in regards to due process. By denying the Appellant's access to the courts, said Act has denied the Appellant's due process rights and the possibility of being made whole again. "A state's sovereignty is not absolute. State power can only be exercised against a person within the confines of due process of law drawn by its procedural and substantive aspects". U.S.C.A. Const. Amend. 14, Aldens, Inc. v. LaFollette, 552 F.2d 745, cert. denied, 98 S. Ct. 236, 434 U.S. 880, 54 L.Ed.2d 161 (C. A. Wis. 1977). The Appellant contends that both his substantive and procedural due process rights have been violated on the basis that he is a doubly protected individual, as opposed to Oklahoma's restrictive, timely filed notice prerequisites to pursue a claim.

"What due process requires under any given circumstance depends on nature of the government function involved, as well as private interest which is affected by government action." emphasis added. U.S.C.A. Const. Amend. 14, Rehbock v. Dixon, 458 F. Supp. 1056. (D.C. Ill. 1978). Goldberg v. Kelly, 90 S.Ct. 1011 (1970). The Appellants would like to examine the Oklahoma Governmental Tort Claim's Act by evaluating it under the test which has been set forth by federal common law, so as to determine whether the Oklahoma Governmental Tort Claim's Act could be construed as violating the Appellant's due process rights. In the case at bar, the only

governmental interest is being timely notified of a potential claim. The Appellant's interest is the right to be compensated, so as to be whole again, after a state hired pedafile sexually molested the Appellant Belle while he was in school as a minor, and had a mental disability. These incidents further disabled the Appellant's emotional abilities. "Due process has a flexibility determined by time, place, and circumstances; no fixed rules are applicable". (emphasis added) U.S.C.A. Const. Amend. 14, Kennedy v. Robb, 547 F.2d 408, cert. denied, 97 S. Ct. 1325, 430 U.S. 913, 51 L. Ed.2d 592, cert denied, 97 S. Ct. 2687, 431 U.S. 959, 53 L. Ed.2d 278 (C.A. 8th Cir. 1976).

Due process must be determined by what is fair and reasonable in light of the totality of the circumstances; it is a flexible, pragmatic concept. Long v. Thornton Tp. High School Dist. 205, 82 F.R.D. 186 (D.C. Ill. 1979). The circumstances which are set forth in the case at bar constitute the reason for the flexibility of due process. The reason that due process is flexible is so to allow that unjust as well as unconstitutional laws are shown to be so, and thereby abolished by this Court. In the case at bar, the Appellant was put in an atmosphere which was suppose to be conducive to help aid him to overcome his learning disability. Instead, the admitted criminal attacks upon him severely restricted his learning ability.

The Appellant contends that he has substantially complied with the Oklahoma Government Tort Claim's Act, under the exceptions which have been set forth in Oklahoma's Case Law. Lucas v. Independent Public School Dist. #35 of Holdenville, 674 P.2d 1131 (Okl. 1983) "Deprivation of due process may be effected by compliance - as well as by non-compliance, with a State Statute. Statutes as well as people must live up to the Due Process Clause". U.S. C. A. Const. Amends. 5 and 14, Addante v. Village of Elmwood Park, 541 F. Supp. 497 (D.C. Ill. 1982). The Appellant's due process rights have been violated, and Appellant moves that this Court deem the Oklahoma Governmental Tort Claim's Act, O.S. 51 §151 et seq. unconstitutional, because of its statutory restrictions of protective classes.

SECOND REASON FOR REVIEW

THE APPELLANTS SUBSTANTIALLY COMPLIED WITH OKLAHOMA GOVERNMENTAL TORTS CLAIM ACT 51 O.S. §151, ET SEQ.

The Appellants have substantially complied with the notice requirement of the Oklahoma Governmental Tort Claims Act. By the trial court ruling that the Appellants had not done so, and by the trial court dismissing this case, it has violated the Appellants due process rights by wrongfully denying him access to the Courts.

Oklahoma Courts have on numerous occasions recognized substantial compliance to equate to true compliance under the provisions of the Governmental Tort Claims Act, 51 O.S. §151, et. seq. In Conway v. Ohio, 669 P.2d 766 (Okl. 1983), the Oklahoma Supreme Court found substantial compliance with no detriment to the school district when correspondence between the attorney for the injured child and the school district's insurer, discussed the incident. It was held that even though the insurance carrier was not an authorized agent to receive notice under the Governmental Tort Claims Act, substantial compliance had successfully been accomplished. Id. at 767. Conway further stated the purpose of the Governmental Tort Claims Act, that notice is sufficient where the information provided to the governmental entity satisfies the purposes underlying the statutory notice requirements: to promote prompt investigations; to provide early opportunity for correction of dangerous conditions; to promote speedy and amicable settlement of meritorious claims; and to allow the governmental entity to prepare for possible fiscal liabilities. Id. at 767. Lucas v. Independent School District #35, supra at 1131 states: "substantial compliance with notice provision was accomplished when the injured party gave a written statement of the accident to the school district's insurance carrier a week after the accident occurred". Furthermore, Oklahoma Courts ruled substantial compliance in Walker v. City of Moore, 836 P.2d 1289 (Okl. 1992), and stated "although we

commencerate with trial courts which must continuously address the issue of substantial compliance regardless of the applicable statutory provisions, the Supreme Court has recently reiterated its acceptance of the reliance on the doctrine of substantial compliance with the provisions of the act." (Governmental Tort Claims Act). Additionally, the Oklahoma Supreme Court in Rierdon v. Wilburton Bd. of Ed., 611 P.2d 239 (Okl. 1980) found where a letter setting forth a claim that a teacher had injured a student by paddling student using more than ordinary force was sent approximately thirty (30) days after injury, to teacher and president of school board, who discussed the matter and hired an attorney, there was substantial compliance with notice requirement even though the letter was not sent to the clerk of the school board and the letter did not state the amount of compensation sought. Finally, Oklahoma Court of Appeals has taken this doctrine of substantial compliance and has applied it to an even broader sense in Woodrow v. University of Oklahoma, 861 P.2d 1009 (Okl. App. 1993), where substantial compliance to the notice requirement was obtained by the Appellant notifying the Board of Regents by letter of a claim for wrongful termination.

In the case at bar, the Appellant's first attorney in this matter sent notice to the Office of Risk Management, which is in compliance with 51 O.S. Supp. 1993 §156(C) instead of the Office of the Clerk of the Appellee School District, which is the requirement set forth in §156(D), and was the proper place for a political subdivision to be sent notice under the Governmental Tort Claims Act. Appellants attorney informed the attorney for the Appellees' School Board, Mr. Doug Mann, of a claim under the Governmental Tort Claims Act (Affidavit of Charles Richardson hereto attached in Appendix as Exhibit "A"). Also, in a letter dated February 8, 1994 (hereto attached in Appendix as Exhibit "B") sent to Dr. Charles Dodson, the superintendent for the Sapulpa School District, Appellants/Plaintiffs attorney, Charles L. Richardson, mentions that in a meeting Mr. Dodson and the school expressed concern about a potential law suit which may be filed in the future.

The Appellants believe that these two incidents provide substantial compliance with the Governmental Tort Claims Act under the set of exceptions set forth in Conway. The first purpose set forth in Conway is to promote prompt investigations. It is clear by review of the records that an investigation, independent of this lawsuit, had already been done by the Appellees/Defendant Sapulpa School District. Investigation had already taken place because criminal charges had already been brought against the assailant in this case, Appellee Hoppe.

Conway states the second purpose is to provide early opportunity for correction of dangerous conditions. In the case at bar, Mr. Hoppe had already been terminated from his position and jailed. So any dangerous conditions which Mr. Hoppe could have possibly represented had already been eliminated.

The third purpose stated in Conway is to promote speedy and amicable settlement of meritorious claims. The sexual molestation of the Appellant Bell took place on and before November 8, 1993. The Appellants Petition for Negligence was filed on October 18, 1994. Under the Governmental Tort Claims Act, 51 O.S. § 151 et. seq., the injured party has one (1) year to file notice. Then, the State or political subdivision has ninety (90) days in which to respond to or have their claim denied by the State or political subdivision, which then allows the injured party to file lawsuit within one hundred and eighty (180) days. In the case at bar, the suit was filed before the one (1) year time period for an injured party to put the State or political subdivision on notice of a claim. So it is clear to see that the prompt, speedy and amicable clause for the purpose of the Governmental Tort Claims Act has been satisfied.

The final purpose listed in Conway is to allow the governmental entity adequate time to prepare for possible fiscal liability. It is clear that the affidavit of Attorney Richardson, which states that discussions of a lawsuit took place before written notice of claim was sent to Appellees, constitutes adequate time for preparation. Additionally, the letter dated February 8, 1994 from Richardson to Attorney Dodson indicates sufficient time for Appellees to prepare for possible fiscal

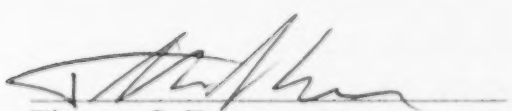
liabilities. Appellees had already hired an attorney to represent them, which indicates their knowledge of Appellant's potential claims. The School District was aware of a possible fiscal liability due to Hoppe's actions when he was arrested and jailed in Appellee's presence.

CONCLUSION

The Oklahoma Governmental Tort Claim's Act, 51 O.S. §151 et seq., as applied to Appellant, is unconstitutional and is violative of Appellant's substantive and procedural due process rights afforded to him by the Fifth (5th) and Fourteenth (14th) Amendment to the Constitution of the United States. Appellant has substantially complied with said Act insofar as the time restraints set forth, as well as to the manner and fashion of notice sent to the State of Oklahoma, to the Office of Risk Management. Appellant has further substantially complied with 51 O.S. §151 et seq. by notifying both the already hired attorney for Appellee School District, as well as the Superintendent of the School in which the molestation of the Appellant took place.

WHEREFORE, premises considered, Appellant prays that this Court grant Appellants Petition for Writ of Certiorari for the reasons stated above and for any such further relief this Court deems equitable and just.

Respectfully submitted,



Thomas S. Evans

Case No. CJ 94-569
FILED IN DISTRICT COURT
CREEK COUNTY,
SAPULPA, OK

95 SEP 25 AM 10:25

PAT HOBBS,
COURT CLERK

AFFIDAVIT OF Charles L. Richardson

The undersigned, Charles L. Richardson, does hereby certify as follows:

1. That I am of legal age and of sound mind;

2. That our firm represented Louis Bell from November 29, 1993, to approximately May 1994;

3. That Thomas S. Evans requested Louis Bell's file and received the same on June 24, 1994;

4. That during our firm's representation of Mr. Bell, I had numerous contracts with Doug Mann, who represented to me that he was the attorney for the Sapulpa Public Schools;

5. That these contacts included telephone calls, letters, and meetings;

Exhibit "A"

6. That during these contacts, discussions between Mr. Mann and myself included a lawsuit being filed on behalf of Mr. Bell against the Sapulpa Public Schools and Tim Hoppe, a teacher's aide at Sapulpa Public Schools;

7. That the discussions of a lawsuit came as a result of the lack of cooperation on the part of Mr. Mann and school officials;

8. That I was informed by school officials that a complete investigation had been conducted surrounding the allegations of Mr. Bell and his grandmother, Clara Redding;

9. That on April 4, 1994, Dr. Dow Greg McCarty was mailed medical records by all three of the doctors treating Mr. Bell;

10. That these records included discussions with Mr. Bell surrounding the incident with Mr. Hoppe;

11. That on April 29, 1994, via letter, Superintendent Dodson acknowledged the event had occurred but did not constitute it as a traumatic event; and,

12. That all these communications with Mr. Mann took place prior to Mr. Evans' representation of Mr. Bell.

AFFIANT FURTHER SAITH NOT.

/s/ Charles L. Richardson
Charles L. Richardson, Affiant

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

Subscribed and sworn to before me this 25th day of September, 1995.

/s/ Christina Citty
Notary Public

(Seal)

My Commission Expires:

08-30-98

RICHARDSON, STOOPS & KEATING

Attorneys at law

From the Desk of:

Charles L. Richardson

February 8, 1994

Dr. Charles Dodson
Sapulpa School District
1 South Mission
Sapulpa, OK 74066

Dear Dr. Dodson:

This letter is to follow up our conversation on February 8, 1994 wherein you had an appointment with Mrs. Clara Redding and myself. As you are well aware, this meeting was called as a result of the letter you sent to Mrs. Redding regarding her being reported to the District Attorney's Office in Sapulpa for Louis Bell's absences. As a result of that letter, Mrs. Redding sent you a letter requesting a meeting at your suggestion.

As I am sure you are well aware and as we discussed today in our meeting, Mrs. Redding has already met with school representatives on a previous day regarding Mr. Bell. At this meeting Mrs. Reeding had several questions regarding the education or lack thereof regarding Mr. Bell. She has been unable to get any cooperation from the school in attempting to transfer Louis to another school, allow him to be homebound and taught, or any other solutions. The only objective solution that was given to her was to transfer him back to where he was prior to being sexually molested at your school. That meant putting him back into classes that the administration felt were not meeting the needs that he had. Therefore, I don't see where that is a good solution or even one worth considering.

Exhibit "B"

Back to the meeting on the 8th; Mrs. Redding and I showed up prior to our 11:00 meeting at which time we waited approximately twenty minutes in your lobby. After waiting, you escorted us to your office and had another lady join us. At that point you told me that I would have to leave or you would not have any conversation with Mrs. Redding. I informed you at that time that Mrs. Redding was becoming quite irritated and aggravated at the school for their lack of taking any positive corrective steps and that she had a meeting a couple of weeks earlier in an attempt to have some of the matters resolved but that she was put off and/or her questions were not answered. On the questions that she did raise, she finally called the Oklahoma Education Department and found out that she was in fact correct and that the answers she received were false. At that, you asked if Mrs. Redding could talk and as I told you, she was there for her meeting and no one was stopping her from talking at which time she told you, at your request, that she wanted me to stay because she was not getting anywhere on her own.

At this time you told me to cancel the meeting. As you were aware, I told you that I was there for the meeting and we had every intention of continuing the meeting. To this you informed me that you would have to call the meeting off. The reason for you calling the meeting off was because you did not have your attorney present. You did not offer any future date or time to continue the meeting nor did you offer any suggestions as to how the meeting could be facilitated in order to meet the needs of Louis Bell.

I would appreciate a meeting being set in the immediate future so that Louis Bell can be take care of. It is my impression from your actions that you don't care whether Louis returns to school or not. The only a

concern you and the school seem to be concerned about is whether lawsuit is going to be filed against the school. It appears that you are trying to hide something or not confront the problem which is at hand.

I would appreciate you taking immediate notice of this letter. If you have any questions, please do not hesitate to call me.

Best regards,

/s/ Charles L. Richardson

Charles L. Richardson
For the Firm

CLR:so

APPENDIX

IN AND FOR THE DISTRICT COURT OF CREEK COUNTY
STATE OF OKLAHOMA

CLARA REDDING, individually and as legal guardian of PATRICK LOUIS BELL, a minor,	)	**FILED IN DISTRICT COURT Creek County, Sapulpa, OK**
Plaintiff,	)	
vs.	)	**95 DEC 13 AM 11:19**
BOARD OF EDUCATION, SAPULPA SCHOOL DISTRICT, STATE OF OKLAHOMA, SAPULPA MIDDLE SCHOOL, TIMOTHY LYNN HOPPE, an individual, DR. CHARLES B. DODSON, SUZANNE WILLIAMS, DOES 1-25,	)	**PAT HOBBS, COURTCLERK**
Defendants.	)	**Case No. CJ 94-569**

JOURNAL ENTRY OF JUDGMENT

On October 23, 1995, this matter came on for decision on the defendants' motion to dismiss or alternative motion for summary judgment. This matter was previously argued to the court on September 25, 1995, at which time the plaintiff was represented by Thomas S. Evans of Evans Law Center and the defendants, the Sapulpa School District, Dr. Charles DODSON and Suzanne Williams (hereafter "the School District Defendants"), were represented by J. Douglas Mann of Rosenstein, Fist & Ringold. After hearing argument of counsel and reviewing the entire court file with regard to this matter the court found as follows:

1. The School District Defendants' motion to dismiss or alternative motion for summary judgment should be treated as a motion for summary judgment.

2. The School District Defendants' motion for summary judgment should be sustained and this case should be dismissed as against the School District Defendants only for the plaintiff's failure to substantially comply with the notice requirements of 51 O.S. §156.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the School District Defendants' motion for summary judgment is sustained.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is granted to the School District Defendants only against the plaintiff on all of the plaintiff's claims and that this case is hereby dismissed against the School District Defendants only.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the court finds that the plaintiff's claims against the School District Defendants have been fully adjudicated. The court directs the preparation and filing of this final judgment as to all of the plaintiff's claims against the School District Defendants only because the court has determined that there is no just reason for delay in the filing of a final judgment on the plaintiff's claim against the School District Defendants. This determination and directive are made pursuant to OKLA. STAT. Title. 12, §994A (Supp. 1995).

/s/ Donald D. Thompson
Judge of the District Court

APPROVED AS TO FORM:

/s/ Thomas S. Evans
Thomas S. Evans, OBA #10642
Evans Law Center
P.O. Box 2646
Ponca City, OK 74602

Attorney for Plaintiff

/s/ J. Douglas Mann
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Tulsa, OK 74103-4500

Attorneys for Defendants, the
Sapulpa School District,
Dr. Charles Dodson and Suzanne
Williams

FILED
COURT OF APPEALS
STATE OF OKLAHOMA

MAR 5 - 1996

JAMES W. PATTERSON
CLERK

IN THE COURT OF APPEALS, DIVISION 2
STATE OF OKLAHOMA

CLARA REDDING, individually and as legal guardian of PATRICK LOUIS BELL, a minor,	)	
Appellant,	)	
vs.	)	No. 86,561
INDEPENDENT SCHOOL DISTRICT NO. 33 OF CREEK COUNTY, OKLAHOMA a/k/a BOARD OF EDUCATION; SAPULPA SCHOOL DISTRICT; STATE OF OKLAHOMA a/k/a SAPULPA MIDDLE SCHOOL; DR. CHARLES B. DODSON; SUZANNE WILLIAMS; and, JANE AND JOHN DOES 1-25,	)	NOT FOR PUBLICATION
Appellees,	)	
and	)	

TIMOTHY LYNN HOPPE, an individual,

Defendant.

APPEAL FROM THE DISTRICT COURT OF
CREEK COUNTY, OKLAHOMA

Honorable Donald D. Thompson, Trial Judge

Thomas S. Evans
Evans Law Center
Ponca City, Oklahoma — For Appellant

J. Douglas Mann
Rosenstein, Fist & Ringold
Tulsa, Oklahoma — For Appellees

MEMORANDUM OPINION

STUBBLEFIELD, J.

This is plaintiff's appeal from grant of summary judgment to the school district defendants based on a finding that plaintiff failed to comply with notice provisions set forth in the Governmental Tort Claims Act. 51 O.S. 1991 & Supp. 1993 §§ 151-172. The appeal was assigned to the accelerated docket pursuant to 12 O.S. Supp. 1995, ch. 15, app. 2. Based on our review of the record on appeal and applicable law, we affirm.

The record reveals that on November 8, 1993, Patrick Louis Bell (Louis), a minor and special education student at Sapulpa Middle School, was sexually assaulted at school by a teacher's aide, Timothy Lynn Hoppe.

Louis's grandmother and legal guardian, Clara Redding, retained an attorney on November 28, 1993. The attorney prepared a "Tort Claim Notice," dated January 26, 1994, but did not file the notice with the office of the clerk of the school district, as required by 51 O.S. Supp. 1993 § 156(D), for asserting a claim against a political subdivision. Instead, the attorney followed the procedure set forth in section 156(C), for asserting a claim against the State of Oklahoma, and filed notice with the "Office of the Risk Management Administrator" of the Purchasing Division of the Office of Public Affairs in Oklahoma City.

Louis returned to school for only two days following the incident, apparently as a result of his grandmother's concern that he would suffer psychological harm from returning to the classroom. On December 2, 1993, Janet Vernon, Principal of Sapulpa Middle School, write to Mrs. Redding expressing her concern about Louis' nonattendance and inquired as to when he would return to school. This prompted a phone call from Mrs. Redding's attorney, Charles L. Richardson, to the school district's attorney, which phone call Richardson documented by letter dated December 9, 1993. The letter provided, in part:

> My contacting you and your office was the result of my conversation with Charles Dodson [sic] involving the letter received by Mr. Bell's guardians concerning his failure to attend school. As we discussed in our conversation, you are well aware of the allegations and the arrest of Tim Hoppe in connection with the incident where Mr. Bell was molested. Our phone conversation was to discuss the possibility of transferring Mr. Bell to another school district so that he could continue his education.
>
> . . . .

> As you are aware, the transfer [request] came about as a result of Mr. Bell returning to school and being faced with some complications. Those complications being that several students and teachers were upset that Tim Hoppe had been removed from the school. Mr. Bell then went to see Mr. Jernigan who was seeing him after the molestations occurred and Dr. Jernigan recommended that he not return to the Sapulpa school.

On December 15, 1993, the attorney for the school district responded:

> I am in receipt of your letter of December 9, 1993, with regard to [Louis Bell]. While your letter did not call for a response, I feel that one is necessary in light of several gratuitous and inaccurate statements in your letter.
>
> . . . .
>
> Third, I never indicated to you that I had any "authority" from the Sapulpa School District. What I advised you was that the Sapulpa School District is perfectly capable of meeting <u>all</u> of the needs of Louis Bell. It would be a waste of taxpayers' money for the Sapulpa School District to approve a transfer to the Jenks School District or any other school district and have to pay for the identical services that its very competent staff can render to Louis.
>
> Fourth, an investigation has been done of the allegations "that several teachers and students were upset that Tim Hoppe had been removed from the school." I am advised that this allegation is wholly false. In fact, when Louis returned for two days, neither he nor anyone else mentioned the incident and, I am

> advised, he had two very successful days. Any suggestions to the contrary are quite simply untrue.
>
> . . ..
>
> I look forward to receiving the letter regarding Mr. Jernigan's opinions concerning Louis.

The record reflects additional telephone conversations, meetings and correspondence after that date between Sapulpa School Superintendent, Dr. Charles Dodson, Mrs. Redding, a psychologist and the attorneys -- all dealing with the issue of the requested transfer and evaluation of Louis' educational and psychological needs. The correspondence continued until August 31, 1994, when the Director of Special Services wrote to Mrs. Redding and denied a due process hearing on the transfer because Louis' residence had changed and he was attending school in another district.

Plaintiff obtained new counsel. She filed her original petition on October 18, 1994, but failed to immediately accomplish service. She filed an amended petition on March 15, 1995, prior to any responsive pleading. The petition named the School District and individuals employed by the district as defendants. Plaintiff alleged that the School District defendants knew or should have known of Hoppe's tendencies to commit sexual assaults and that they failed to investigate his background at the time he was hired.

Defendants Dodson, Williams and the School District filed a motion to dismiss/summary judgment asserting that the trial court lacked subject matter jurisdiction and that Plaintiff's action was barred due to failure to properly file notice of the claim within one year after the loss occurred. Defendants Dodson and Williams further asserted that, because they were acting within the scope of their employment with the School District, Plaintiff could not assert claims against them as individuals. Sections 153(B) and 163(C). Defendants attached to their motion the supporting affidavit of Dr. Dodson.

Plaintiff opposed the motion but did not dispute Defendants' statement of material facts. Instead, she claimed actual or substantial compliance with notice provisions based on notice of claim to the School District "in care of" the Office of Risk Management. She also claimed substantial compliance based on the "numerous correspondences" between her first attorney of record and the School District.

Defendants filed a reply brief and attached a second affidavit of Dr. Dodson, along with copies of correspondence that the School District or its attorneys received from or sent to Plaintiff or her attorney. Dr. Dodson's affidavit stated:

> 3. At no time did I, the clerk of the board of education of the Sapulpa School District, any member of the board of education or any authorized representative of the Sapulpa School District, receive from the Office of the Risk Management Administrator for the State of Oklahoma or from any other person any notice of a tort claim by Clara Redding or on behalf of Clara Redding or Patrick Louis Bell.
>
> . . . .
>
> All of this correspondence related to the decision by Ms. Redding not to return her ward, Patrick Louis Bell, to the Sapulpa School District and her efforts to obtain a transfer for him to another school district. None of this correspondence contained any notice that Ms. Redding desired to assert a tort claim against the Sapulpa School District.

This matter was set for hearing on September 25, 1995. On that day, Plaintiff filed an affidavit of her former attorney, Charles L. Richardson, who stated that: (1) His firm represented Louis until approximately May 1994; (2) Due to "lack of cooperation," his discussions with the School District's attorney included "a lawsuit

being filed on behalf of [Louis] against the Sapulpa Public School;" (3) He was informed by school officials that a "complete investigation" had been conducted surrounding the allegations of Louis and Mrs. Redding; and, (4) The School District psychologist, Dr. McCarty, was mailed medical records by Louis' treating doctors.

The trial court found that Defendants' motion should be treated as a motion for summary judgment and sustained the motion based on its finding that Plaintiff had failed to substantially comply with the notice requirements of section 156. Plaintiff appeals.

Plaintiff raises two issues in her petition in error -- whether she actually or substantially complied with notice of claim provisions and whether the statue of limitations in the Governmental Tort Claims Act applies to "mentally retarded minors." With regard to the latter issue, we note that it was not raised in the trial court. We will not consider an issue raised for the first time on appeal from grant of summary judgment Indiana Nat'l Bank v. State Dept. of Human Services, 857 P.2d 53 (Okla. 1993).

It is clear from the record that Plaintiff did not comply with section 156(D), the notice provision applicable to a claim against a political subdivision. Plaintiff's first attorney filed notice of claim in a mistaken reliance on section 156(C), which clearly is applicable only to claims asserted against the state. Based on uncontroverted evidentiary materials, this incorrect notice attempt did not result in notice to the School District. No actual notice was given to the School District. Although strict compliance with the notice provisions of the Act is not required, Rierdon v. Wilburton Board of Education, 611 P.2d 239 (Okla. 1980), substantial compliance has generally been based on some notice to the proper political subdivision that, though not in strict compliance with statutory requirements, was determined legally sufficient. Thus, we concluded that the improper service to the wrong entity, which did not result in actual notice to the political subdivision, is not substantial compliance with statutory provisions.

In order to determine whether there was substantial compliance, we must look to any actual notice given, which need not be in writing. Duesterhaus v. City of Edmond, 634 P.2d 720 (Okla. 1981). Viewing the summary judgment record in a light most favorable to Plaintiff, we

must conclude, for the following reasons, that the evidentiary materials regarding communication between Plaintiff and Defendants demonstrated a lack of substantial compliance with section 156(D).

Notice of an alleged tort and accompanying injury is not the equivalent of notice of a claim for monetary relief or compensation as a result of the incident and is insufficient under the Act. Graves v. Rose, 663 P.2d 733 (Okla. 1983). For example, oral notice to a school counselor and superintendent that an incident occurred which "hurt" the minor plaintiff did not constitute notice of a claim for relief and thus denied the school district the opportunity to promptly investigate and quickly settle the claim if it were determined to be meritorious. Maxwell v. Independent Sch. Dist. 32 of Okfuskee County, 672 P.2d 1179, 1181 (Okla. Ct. App. 1983).

The claim for relief is a critical component of any notice, and we can find no holding of substantial compliance without such a demand. In Duesterhaus, the plaintiffs verbally notified the city attorney of their claim and had negotiated with him concerning settlement. Finding this to be sufficient notice under the Act, the court stated:

> We fail to see how the City could have suffered any prejudice when the municipal counselor was actually engaged in settlement negotiations, and the claim was under investigation. Although notice to the municipal counselor is an unauthorized procedure outside the purview of the Act, in this instance we find that the notice was sufficient to constitute substantial compliance.

Id. at 723. Actual settlement negotiations would constitute notice of demand for relief.

In the present matter, Plaintiff had not claimed, and the evidentiary materials do not reveal, that any settlement negotiations took place between the parties. The correspondence shows that Louis' medical records were sent to the school for purposes of evaluating his "Individualized Education Progrsm," the issue of his transfer to another

district, and whether it would be psychologically detrimental to Louis to attend school at other facilities in the Sapulpa school system. The medical records were not sent for purposes of establishing a claim for money damages.

Although Plaintiff's first attorney swore, in his affidavit, that school officials had conducted a "complete investigation" surrounding Plaintff's claims, the correspondence indicates that the "investigation" by school officials actually involved allegations of teachers and students being upset with Louis over Hoppe's removal from the school. Furthermore, the attorney did not aver that he had demanded monetary relief in any of his conversations with the School District's attorney. And, the "lack of cooperation" he referred to in his affidavit is shown by the correspondence to be related to attempts to transfer Louis to another school.

The meetings that took place and the discussions between the parties and their attorneys were well documented in their correspondence. Although Plaintiff's first attorney thought that he had provided the School District with written notice of a claim in late January 1994, clearly he had not. The subsequent correspondence demonstrates that the School District, as a result of the molestation incident, had no "actual notice of a claim for monetary redress." Maxwell, 672 P.2d at 1181.

We cannot find in the months of correspondence between the parties or their counsel any statement that constitutes a claim for monetary relief against the School District. The correspondence was directed toward the transfer issue and the School District's ability to meet Louis' educational needs. This case is distinguishable from Lucas v. Independent School District No. 35 v. Holdenville, 674 P.2d 1131 (Okla. 1983), where written notice of claim was provided to the school district's insurance carrier within one week of the accident.

In view of the foregoing, we find that the trial court did not err in determining that Plaintiff did not substantially comply with the notice provisions of the Act. Accordingly, the trial court's order grant summary judgment in favor of Defendants is AFFIRMED.

GOODMAN, P.J., and BOUDREAU, J., concur.

FILED
SUPREME COURT
STATE OF OKLAHOMA

MAY 22 1996

JAMES W. PATTERSON
CLERK

IN THE SUPREME COURT OF
THE STATE OF OKLAHOMA

Wednesday, May 22, 1996

THE CLERK IS DIRECTED TO ISSUE
THE FOLLOWING ORDERS:

86,256 SMS Financial, L.L.C., an Arizona limited liability company v. James A. Ragland, an individual et al.
Certiorari denied.
CONCUR: Kauger, V.C.J., Hodges, Lavender, Simms, Opala, Summers, Watt, JJ.
DISSENT: Wilson, C.J., Hargrave, J.

86,561 Clara Redding, individually and as legal guardian of Patrick Louis Bell, a minor, v. Independent School District No. 33 of Creek County, Oklahoma a/k/a Board of Education, Sapulpa School District et al.
Certiorari denied.
CONCUR: Hodges, Lavender, Simms, Hargrave, Summers, Watt, JJ.
DISSENT: Wilson, C.J., Kauger, V.C.J., Opala, J.

86,695 Mary Jane Wilson v. William Slater, M.D. and Jackson County Memorial Hospital.

Certiorari denied.
CONCUR: Wilson, C.J., Kauger, V.C.J., Hodges, Lavender, Opala, JJ.
DISSENT: Simms, Hargrave Summers, JJ.
NOT PARTICIPATING: Watt, J.

87,181 Dolly B. Richie, Personal Representative of the Estate of Darrell Edwin Richie, Deceased and Dolly B. Richie, individually v. Grady Memorial Hospital Authority d/b/a Grady Memorial Hospital et al.
Petition for certiorari to review a certified interlocutory order is denied.
All Justices concur.

87,271 Eugene Crumm, as surviving son and on behalf of all heirs at law of Goldie Crumm, Deceased v. Aleta May Beach.
Petition for certiorari to review a certified interlocutory order is denied.
All Justices concur.

87,317 Miles B. Jacobs, as Personal Representative of the Estate of Cheryl Jacobs, Deceased v. The Honorable Sam C. Fullerton, III, District Court Judge etc.
Application to assume original jurisdiction is denied.
CONCUR: Lavender, Simms, Hargrave, Summers, Watt, JJ.
DISSENT: Wilson, C.J., Kauger, V.C.J., Hodges Opala, JJ.

87,334 W. T. Lewis, Sr. by and through his legal guardian Christina Hoover v. Pleasant Valley Nursing Care Center (an Oklahoma corporation).
Petition for certiorari to review a certified interlocutory order is denied.
All Justices concur.

Petition for certiorari to review a certified interlocutory order is denied.

All Justices concur.

87,356 F. W. Qaddiffi Rasheed v. Virgil Neuenschwander, Major etc. et al.

Application to assume original jurisdiction is denied.

CONCUR: Wilson, C.J., Kauger, V.C.J., Hodges, Lavender, Simms, Hargrave, Summers, Watt, JJ.

Opala, J., dissenting

I would transfer this cause to the District Court of Oklahoma City.

/s/ Alma Wilson

CHIEF JUSTICE

CERTIFICATE OF SERVICE

This will certify that on this 16th day of August, 1996, three (3) true and correct copies of the above and foregoing was mailed by U.S. Mail to Doug Mann, Attorney for Independent School District No. 33 of Creek County, Oklahoma, a/k/a Board of Education, Sapulpa School District, State of Oklahoma, a/k/a Sapulpa Middle School, of ROSENSTEIN, FIST & RINGOLD, 525 South Main, Suite 700, Tulsa, OK 74103 (918-585-9211) with postage fully prepaid thereon.

Thomas S. Evans

Supreme Court, U.S.
FILED
SEP 18 1996
CLERK

No. 96-271

In The

Supreme Court of the United States

October Term, 1995

CLARA REDDING, individually and as legal guardian of PATRICK LOUIS BELL, a minor,

Petitioners,

v.

INDEPENDENT SCHOOL DISTRICT NO. 33 OF CREEK COUNTY, OKLAHOMA, a/k/a BOARD OF EDUCATION, SAPULPA SCHOOL DISTRICT, STATE OF OKLAHOMA, a/k/a SAPULPA MIDDLE SCHOOL; TIMOTHY LYNN HOPPE, an individual; DR. CHARLES B. DODSON; SUZANNE WILLIAMS; and JANE and JOHN DOES 1-25,

Respondents.

On Petition For Writ Of Certiorari To The Oklahoma Supreme Court

BRIEF IN OPPOSITION

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RESPONSE TO PETITION FOR WRIT OF CERTIORARI

Respondents, Independent School District No. 33 of Creek County, Oklahoma (the "Sapulpa School District"), Dr. Charles B. Dodson, and Suzanne Williams,[1] respectfully pray that this Honorable Court deny the Petitioner's request for a writ of certiorari. Petitioner seeks review of an unpublished opinion of the Oklahoma Court of Appeals, Oklahoma's intermediate appellate court, which neither considered nor purported to decide any question of federal law. The only issue properly before the Oklahoma Court of Appeals involved purely a question of Oklahoma law, that being whether Petitioner had substantially complied with the Oklahoma Governmental Tort Claims Act's requirement that a notice of a tort claim be delivered to a political subdivision prior to filing suit against such political subdivision. Because Petitioner made no attempt to raise a question of federal law until after the Oklahoma Court of Appeals had rendered its decision, this Court lacks jurisdiction to review this case. Respondents respectfully ask that Petitioner's request for a writ of certiorari be denied.

OPINIONS BELOW

See Petitioner's Appendix setting forth the "not for publication" opinion of the Oklahoma Court of Appeals,

[1] The remaining defendants named in the caption, Timothy Lynn Hoppe and Jane and John Does 1-25, were never served and are not parties to this action.

Division 2, in *Clara Redding v. Independent School District No. 33 of Creek County, Oklahoma,* Case No. 86,561.

JURISDICTIONAL STATEMENT

This Court cannot properly exercise jurisdiction over this case under 28 U.S.C. § 1257. No federal question was presented to or decided by the Oklahoma Court of Appeals. This case was decided below solely on a question of Oklahoma law.

STATEMENT OF THE CASE

A. Procedural History in the State Courts of Oklahoma

Petitioner initiated this action individually and as legal guardian of Patrick Louis Bell, a minor ("Bell"), in the district court of Creek County, Oklahoma. Petitioner alleged that Bell, a special education student, had been sexually molested by defendant Timothy Lynn Hoppe while Hoppe was employed as a teacher's aide at the Sapulpa School District. Petitioner alleged that Respondents were negligent in employing Hoppe when they knew or should have known that Hoppe had a propensity or tendency to assault students. Petitioner further alleged that she had complied with the notice provisions of the Oklahoma Governmental Tort Claims Act, OKLA. STAT. tit. 51, §§ 151-171. Petitioner did *not* allege that the Oklahoma Governmental Tort Claims Act violated the due process clause of the fourteenth amendment or was in

any way violative of the Constitution of the United States. *See* Amended Petition for Negligence Prior to Responsive Pleadings, attached at Respondents' Appendix A.

The Oklahoma Governmental Tort Claims Act requires that any person with a tort claim against the state or a political subdivision[2] provide written notice of such claim to the state or political subdivision before filing suit. OKLA. STAT. tit. 51, § 156. Pursuant to Section 157, the state or political subdivision has ninety (90) days within which to allow the claim. A plaintiff may not bring an action in tort until the state or political subdivision has been notified of the claim and the claim has been denied in whole or in part. If the state or political subdivision has not allowed the claim within ninety (90) days, the claim is deemed denied and the claimant may then file suit. The Oklahoma Governmental Tort Claims Act requires that the notice of a tort claim be provided to the state or political subdivision within one (1) year of the event giving rise to the claim and that suit be brought within 180 days of the state or political subdivision's denial of the claim.

The Respondents filed a motion to dismiss or, in the alternative, for summary judgment on the ground that Petitioner had failed to comply with the notice provisions of the Oklahoma Governmental Tort Claims Act. The Respondents attached the Affidavit of Respondent Dr. Charles Dodson, Superintendent of the Sapulpa School

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[2] The Oklahoma Governmental Tort Claims Act specifically defines "political subdivision" to include "school districts." OKLA. STAT. tit. 51, § 152(8).

District, which recited that no notice of a tort claim on behalf of Petitioner or Bell had ever been received by any representative of the Sapulpa School District. *See* the opinion of the Oklahoma Court of Appeals set forth in Petitioner's Appendix.

Petitioner filed a response brief in which she acknowledged that written notice of her tort claim had been mailed to the Office of the Risk Management Administrator for the State of Oklahoma pursuant to OKLA. STAT. tit. 51, § 156(C), rather than to the clerk of the Board of Education of the Sapulpa School District as required by OKLA. STAT. tit. 51, § 156(D). Petitioner argued, however, that notice to the State of Oklahoma, combined with correspondence from her former attorney to the Sapulpa School District and the Sapulpa School District's attorneys, "substantially complied" with the notice provisions of the Oklahoma Governmental Tort Claims Act. Petitioner cited various decisions from the Oklahoma Supreme Court holding that substantial compliance with the notice provisions of the Oklahoma Governmental Tort Claims Act is sufficient where the purposes underlying the notice requirement are satisfied.

The district court of Creek County granted summary judgment to the Respondents, finding that Petitioner had *not* substantially complied with the notice requirements of the Governmental Tort Claims Act. Petitioner appealed to the Oklahoma Supreme Court.[3] In her Petition in Error

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[3] Under Oklahoma law, all appeals are initially filed with the Oklahoma Supreme Court, which either retains jurisdiction of the appeal or assigns it to the Oklahoma Court of Appeals for decision. A party may petition the Oklahoma Supreme Court for

to that court, Petitioner purported to raise two issues: whether she had complied or substantially complied with the notice provisions of the Oklahoma Governmental Tort Claims Act under the applicable decisions of the Oklahoma Supreme Court, and "whether the statute of limitations set out in Oklahoma's Governmental Tort Claims Act apply (sic) to mentally retarded minors." *See* Exhibit "C" to Petitioner's Amended Petition in Error, attached at Respondents' Appendix B. This was the first time Petitioner raised any question about the applicability of the Oklahoma Governmental Tort Claims Act to Petitioner's case (*see* the opinion of the Oklahoma Court of Appeals in Petitioner's Appendix), and even this untimely-raised issue did *not* challenge the constitutionality of the Oklahoma Governmental Tort Claims Act.

The Oklahoma Supreme Court assigned the case to the Oklahoma Court of Appeals for decision, and the Oklahoma Court of Appeals affirmed the summary judgment in favor of Respondents. The Oklahoma Court of Appeals specifically declined to rule on the applicability of the Oklahoma Governmental Tort Claims Act to "mentally retarded minors," noting:

> With regard to the latter issue, we note that it was not raised in the trial court. We will not consider an issue raised for the first time on appeal from grant of summary judgment. *Indiana Nat'l Bank v. State Dept. of Human Services*, 857 P.2d 53 (Okla. 1993).

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a writ of certiorari to review a decision by the Oklahoma Court of Appeals, but such review is purely discretionary. OKLA. STAT. tit. 20, § 30.1.

Petitioner then sought a writ of certiorari from the Oklahoma Supreme Court, which declined to review the decision of the Oklahoma Court of Appeals. Petitioner thereupon petitioned this Court for a writ of certiorari to the Oklahoma Supreme Court.

B. Misstatements by Petitioner

The factual background of this case is accurately set forth in the opinion of the Oklahoma Court of Appeals contained in Petitioner's Appendix. As that opinion makes clear, the only question considered and passed upon by the Oklahoma courts was whether, under Oklahoma law, Petitioner substantially complied with the notice requirements of the Oklahoma Governmental Tort Claims Act. That issue in no way involves an important question of federal law.

Pursuant to Rule 15 of the Rules of the Supreme Court of the United States, Respondents bring the following misstatements of fact contained in the Petition for Certiorari to the Court's attention.

The first issue identified on page i. of the Petition falsely states that the Sapulpa School District "actually knew that a claim against them was to be filed and had already hired a law firm to defend the potential claim." As the Oklahoma Court of Appeals correctly pointed out, Oklahoma law requires that a party at least provide the state or political subdivision with actual notice of a claim for monetary relief before an Oklahoma court will conclude that such party has substantially complied with the notice provisions of the Oklahoma Governmental Tort Claims Act. The Oklahoma Court of Appeals reviewed

the evidence and found that none of the correspondence on which Petitioner relied contained any claim for damages. Instead, the Oklahoma Court of Appeals noted that the correspondence between Petitioner's former attorney and the Sapulpa School District and the Sapulpa School District's attorney concerned Petitioner's desire to obtain a transfer that would allow Bell to attend school in a different school district. Accordingly, the correspondence cited by Petitioner related only to the transfer issue and the issue of the Sapulpa School District's ability to meet Bell's educational needs, not to a tort claim for money damages. Opinion of the Oklahoma Court of Appeals in Petitioner's Appendix.

In addition, there is absolutely no evidence anywhere in the record to suggest that the Sapulpa School District hired a law firm "to defend the potential claim." In truth and fact, Respondents' attorneys have a long-term relationship with the Sapulpa School District that predates the facts giving rise to this lawsuit by many years. Petitioner's assertion that Respondents "hired" a law firm to defend against her potential claim is an egregious misrepresentation of fact.

Petitioner states in the third paragraph under "Jurisdiction" on page vii. that her contentions under the fifth amendment and the fourteenth amendment "were first brought up in arguments during the hearing [on Respondents' motion for summary judgment] by the Appellee (sic), as well as in Appellee's (sic) first Appeal Brief to the Oklahoma Court of Appeals. . . . " To suggest that any constitutional claim was presented to the district court of Creek County is flatly untrue. No such claim was raised in Petitioner's initial petition (*see* Respondents' Appendix

A) or in any brief filed with that court. The sole issue before the district court of Creek County was whether Petitioner had complied or substantially complied with the notice requirements of the Oklahoma Governmental Tort Claims Act.

In addition, neither Petitioner nor Respondents filed an "Appeal Brief to the Oklahoma Court of Appeals." Oklahoma law specifically provides that on appeals from summary judgments, the appellate court "shall confine its review to the record 'actually presented' to the trial court." Rule 1.203(A)(3), Rules of Appellate Procedure in Civil Cases, OKLA. STAT. tit. 12, Ch. 15, App. 2. In addition, Rule 1.203(A)(3) specifically provides: "Unless otherwise ordered by the appellate court, no briefs will be allowed on review." Appellate briefs were *not* ordered by the Oklahoma Court of Appeals in this case, and no appeal briefs were filed.

The Petitioner did file a Petition in Error with the Oklahoma Supreme Court to initiate her appeal, but that document contained no reference to any claim under the fifth or fourteenth amendments. *See* Respondents' Appendix B. Petitioner did not attempt to raise a claim under the United States Constitution until she filed a Petition for Certiorari in the Oklahoma Supreme Court in the attempt to persuade that court to review the decision of the Oklahoma Court of Appeals. As previously noted, the Oklahoma Supreme Court declined to grant certiorari.

Page 2 of the text of Petitioner's petition recites that a February 8, 1994, letter from Petitioner's first attorney to Respondent Dr. Charles Dodson contains a reference to a meeting among Petitioner, her previous attorney, and Dr.

Dodson "which included a discussion concerning a potential lawsuit." A copy of this letter is reproduced in Petitioner's petition, and it does not indicate that a potential lawsuit was discussed. To the contrary, taken in context, the comment clearly expresses a subjective opinion arising from the frustration of Petitioner's former attorney at the Sapulpa School District's refusal to allow Bell to transfer to another school district:

> I would appreciate a meeting being set in the immediate future so that Louis Bell can be taken care of. It is my impression from your actions that you don't care whether Louis returns to school or not. The only concern you and the school seem to be concerned about is whether a lawsuit is going to be filed against the school.

This letter in no way establishes that the parties ever discussed a potential lawsuit by Petitioner against Respondents or that Petitioner ever made any claim for monetary damages against the Sapulpa School District.

REASONS FOR DENYING THE WRIT

I.

This Court Lacks Jurisdiction to Consider Petitioner's Arguments.

Petitioner contends that this Court has jurisdiction of this matter under Rule 10(c) of the Rules of the Supreme Court of the United States. Yet as the record of this case shows, the Oklahoma Court of Appeals neither decided nor purported to decide "an important question of federal law." Petitioner's Amended Petition for Negligence

Prior to Responsive Pleadings, attached at Respondents' Appendix A, and her Amended Petition in Error to the Oklahoma Supreme Court, attached at Respondents' Appendix B, establish that Petitioner did not seek to challenge the constitutionality of the Oklahoma Governmental Tort Claims Act or to raise any question of federal law until after the Oklahoma Court of Appeals had rendered its decision.

This Court has announced on many occasions that it will not review a state court's decision on a federal issue not addressed by the state court. As Justice Marshall noted for the unanimous Court in *Exxon Corp. v. Eagerton*, 462 U.S. 176, 181 n.3 (1983):

> Although appellants . . . also contend that the application of the pass-through prohibition to oil was preempted by the Emergency Petroleum Allocation Act of 1973 (EPAA) . . . and the regulations promulgated thereunder, we conclude that we have no jurisdiction to consider this contention. The decision below does not discuss this issue, and when " 'the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary.' " *Fuller v. Oregon*, 417 U.S. 40, 50, n.11 (1974), *quoting Street v. New York*, 394 U.S. 576, 582 (1969). No such showing has been made here. Although appellants . . . have represented to this Court that the trial court held the pass-through prohibition to be preempted by the EPAA . . . an examination of the trial court opinion reveals that in fact the court made no mention of the EPAA. Nor does

> anything in the record before us indicate that this issue was raised in the trial court. Appellants did address the EPAA in their brief before the Supreme Court of Alabama . . . but that court did not pass upon the issue. Under these circumstances, we have no jurisdiction to consider whether the EPAA preempted the application of the pass-through prohibition to oil, for it does not affirmatively appear that that issue was decided below. *Bailey v. Anderson*, 326 U.S. 203, 206-207 (1945).

The same rule was followed in *Yee v. City of Escondido*, 503 U.S. 519, 532-533 (1992) (Court declined to address substantive due process claim under 28 U.S.C. § 1257 where claim was not raised or addressed in state court), and in *Beck v. Washington*, 369 U.S. 541, 549-553 (1962) (equal protection challenge to state statute not before the Court because it was not properly presented in the state court).

In *Illinois v. Gates*, 462 U.S. 213 (1983), the Court considered without deciding whether the rule against considering matters "not pressed or passed upon below" is jurisdictional or prudential. In declining to consider whether the exclusionary rule should be modified where that issue had not been presented to or decided by the state court, the Court examined its precedents and identified several purposes for the rule against considering issues "not pressed or passed upon below":

> "Questions not raised below are those on which the record is very likely to be inadequate since it certainly was not compiled with those questions in mind." *Cardinale v. Louisiana*, 394 U.S. 437, 439 (1969). . . .

> Likewise, "due regard for the appropriate relationship of this Court to state courts," *McGoldrick v. Compagnie Generale Transatlantique*, 309 U.S. [430], at 434-435 [(1940)], demands that those courts be given an opportunity to consider the constitutionality of the actions of state officials, and, equally important, proposed changes in existing remedies for unconstitutional actions. Finally, by requiring that [the issue first be presented to the state courts], we permit a state court, even if it agrees with the [proponent] as a matter of federal law, to rest its decision on an adequate and independent state ground. *See Cardinale, supra*, at 439. *Illinois v. Gates*, 402 U.S. at 221-222.

All of the reasons identified by the Court in *Illinois v. Gates* are equally applicable to this case.

The procedural background against which Petitioner seeks to raise a constitutional issue in this case is very similar to that of *Yee v. City of Escondido*, 503 U.S. 519. Like Petitioner, the Yees "did not include a due process claim in their complaint," nor did they raise a due process issue before the California Court of Appeal. *Id.* at 533. "It was not until their petition for review in the California Supreme Court that petitioners finally raised a substantive due process claim." *Id.* The California Supreme Court denied discretionary review, which, under California law, "expresses no view as to the merits." *Id.* "In short, petitioners did not raise a substantive due process claim in the state courts, and no state court has addressed such a claim." *Id.* Because no substantive due process claim was presented to or addressed by the California courts, this Court declined to consider such a claim under 28 U.S.C. § 1257.

Petitioner likewise failed to raise a constitutional claim of any kind in her amended petition filed in the district court of Creek County, Oklahoma, or in her Petition in Error initiating an appeal to the Oklahoma Supreme Court. After the Oklahoma Supreme Court assigned the appeal to the Oklahoma Court of Appeals, that court issued a "not for publication" decision. Under Oklahoma's rules of appellate procedure, opinions marked "not for publication" "shall not be considered as precedent by any court or in any brief or other material presented to any court, except to support a claim of res judicata, collateral estoppel, or law of the case." Rule 1.200(B), Rules of Appellate Procedure in Civil Cases, OKLA. STAT. tit. 12, Ch. 15, App. 2. Thus, the unpublished decision Petitioner asks this Court to review has no precedential value and may not even properly be cited as a controlling interpretation of Oklahoma law. Clearly, Petitioner's claim is no more properly before this Court than was the substantive due process claim sought to be asserted in *Yee v. City of Escondido*. Petitioner's request for a writ of certiorari should be denied.

II.

The Oklahoma Court of Appeals Properly Applied Oklahoma Law.

The Amended Petition for Negligence Prior to Responsive Pleadings filed by Petitioner in the district court of Creek County contained no claim that the Oklahoma Governmental Tort Claims Act should not be applied to "mentally retarded minors." Indeed, that amended petition recited that proper notice of Petitioner's tort claim had been given to the Sapulpa School

District pursuant to the Oklahoma Governmental Tort Claims Act and that sufficient time had passed to constitute denial of such claim. *See* Respondents' Appendix A.

After the trial court had granted summary judgment to Respondents, Petitioner sought to challenge the applicability of the Oklahoma Governmental Tort Claims Act to her claim. The Oklahoma Court of Appeals declined to consider a question raised for the first time on appeal from a summary judgment, however, citing *Indiana Nat'l Bank v. State Dept. of Human Services*, 857 P.2d 53 (Okla. 1993). Opinion of Oklahoma Court of Appeals in Petitioner's Appendix.

Indiana Nat'l Bank properly recites the rule followed by the Oklahoma Supreme Court:

> Parties may not present new issues on appeal which seek reversal of a trial court grant of summary judgment which were not presented to the trial court. *Id.* at 57, n.1.

To the same effect is *Northrip v. Montgomery Ward & Co.*, 529 P.2d 489, 494 (Okla. 1974) (appeal from order granting summary judgment limited to issues "raised by the pleadings" in keeping with rule that appellate review is "confined to issues presented by the record"), and *Jones v. Alpine Investments, Inc.*, 764 P.2d 513, 515 (Okla. 1987) ("Parties on appeal are limited to the issues presented at the trial level").

Petitioner contends that she "brought up" such issue in arguments before the district court of Creek County. Petition for Certiorari, p. vii. There is no transcript of this hearing, and counsel for Respondents adamantly denies

that such issue was raised or argued. But even if Petitioner had broached such issue at that time (which she did not), that is not sufficient under Oklahoma law to raise an issue for appellate review. In *Great Plains Federal Savings & Loan Ass'n v. Dabney*, 846 P.2d 1088 (Okla. 1993), the Oklahoma Supreme Court explained that although an issue may have been mentioned in oral argument before the trial court, such issue was not properly before the trial court where it was neither raised in the pleadings nor addressed in the parties' briefs. *Id.* at pp. 1089-1090, n.2.

In appeals under 28 U.S.C. § 1257, this Court looks to the law of the state to determine whether an issue was properly raised in the state courts. *Exxon Corp. v. Eagerton*, 462 U.S. 176, 181 n.3 (1983) ("The general practice of the Alabama appellate courts is not to consider issues raised for the first time on appeal"); *Beck v. Washington*, 369 U.S. 541, 549-553 (1962) ("The Washington Supreme Court has unfailingly refused to consider constitutional attacks upon statutes not made in the trial court").

Under the law of Oklahoma, Petitioner did not properly raise any issue as to the applicability of the Oklahoma Governmental Tort Claims Act to her claim. She neither pleaded in her amended petition that the Oklahoma Governmental Tort Claims should not apply to a claim brought on behalf of a "mentally retarded minor" nor pressed such a contention in her brief in response to Respondents' motion for summary judgment. This Court should therefore decline to grant certiorari to consider a claim never properly raised in the state courts of Oklahoma.

CONCLUSION

For the reasons stated herein, Respondents pray that Petitioner's Petition for Writ of Certiorari to the Oklahoma Supreme Court be denied.

Respectfully submitted,

J. DOUGLAS MANN*
JERRY A. RICHARDSON
ROSENSTEIN, FIST & RINGOLD
525 South Main, Suite 700
Tulsa, OK 74103
(918) 585-9211

Counsel for Respondents

*Counsel of Record

RESPONDENTS' APPENDIX A

IN AND FOR THE DISTRICT COURT OF
CREEK COUNTY
STATE OF OKLAHOMA

CLARA REDDING, individually and as legal guardian of PATRICK LOUIS BELL, a minor, Plaintiff, vs. INDEPENDENT SCHOOL DISTRICT NO. 33 OF CREEK COUNTY, OKLAHOMA, a/k/a BOARD OF EDUCATION, SAPULPA SCHOOL DISTRICT, STATE OF OKLAHOMA, a/k/a SAPULPA MIDDLE SCHOOL; TIMOTHY LYNN HOPPE, an individual; DR. CHARLES B. DODSON; SUZANNE WILLIAMS; and JANE and JOHN DOES 1-25 Defendants.	Case No. CJ 94-569 ATTORNEY'S LIEN CLAIMED BY: /s/ Thomas S. Evans Thomas S. Evans

AMENDED PETITION FOR NEGLIGENCE PRIOR TO RESPONSIVE PLEADINGS

(Filed March 15, 1995)

COMES NOW the Plaintiff, Clara Redding, individually and as legal guardian of Patrick Louis Bell, a minor, and in amending her Petition for Negligence Prior to Responsive Pleadings, would allege and state as follows:

1. That at all foregoing times and dates relative to this cause of action, the Parties are properly named and

that the jurisdiction and venue of this Court is good and proper.

2. That prior to November 8, 1993, minor Patrick Louis Bell, a special education student, was subjected to numerous acts of sexual molestation, sexual improprieties, etc., at the direction of Defendant teacher aide Timothy Lynn Hoppe. Teacher aide Timothy Lynn Hoppe was an employee of the Sapulpa School District, more particularly the Independent School District No. 33 of Creek County, Oklahoma, a/k/a Sapulpa Middle School.

3. On the aforementioned date, November 8, 1993, Defendant Timothy Lynn Hoppe sexually assaulted and battered the minor Plaintiff, Patrick Louis Bell, causing him personal and emotional injuries as set forth below.

4. Defendants Independent School District No. 33 of Creek County, Oklahoma, a/k/a Board of Education, Sapulpa School District, a/k/a Sapulpa Middle School, Dr. Charles B. Dodson, and Suzanne Williams, and Jane and John Does 1 - 25 caused or contributed to the aforementioned injuries, in one or more of the following respects:

(a) The aforementioned Defendants, Independent School District No. 33 of Creek County, Oklahoma, a/k/a Board of Education, Sapulpa School District, a/k/a Sapulpa Middle School, Dr. Charles B. Dodson, and Suzanne Williams, employed the individual Defendant, Timothy Lynn Hoppe, in a teacher's assistant capacity at a time when they knew or should have shown that Defendant Hoppe had a propensity or tendency to sexually assault students;

(b) Defendants Independent School District No. 33 of Creek County, Oklahoma, a/k/a Board of Education, Sapulpa School District, a/k/a Sapulpa Middle School, Dr. Charles B. Dodson, and Suzanne Williams, failed to investigate and discover the previous record of Mr. Hoppe for sexual assault and battery at a time when Defendants knew or should have known that Mr. Hoppe would be placed in a position of authority over students, including mentally challenged student [sic], such as the minor Plaintiff, Patrick Louis Bell.

5. As a result of Defendants' acts as set forth above, the minor Plaintiff, Patrick Louis Bell, suffered personal injuries; has and will suffer pain of mind and body; has and will suffer psychological injury; and has and will be disabled.

6. As a further result of Defendants' acts, errors and/or omissions as set forth above, Plaintiff Clara Redding has incurred and will continue to incur medical expenses for the care and treatment of the minor Plaintiff Patrick Louis Bell.

7. That proper notice of a claim was provided to the Defendants under the Oklahoma Governmental Tort Claims Act, Title 51, Sections 151, et seq., and that sufficient time has passed to constitute a denial of the Defendants of said Notice of Claim.

8. Acts of the individual Defendant, Timothy Lynn Hoppe, as set forth above, were intentional and malicious, such that punitive damages should be imposed.

8 [sic]. Acts of Defendants Independent School District No. 33 of Creek County, Oklahoma, a/k/a Board of Education, Sapulpa School District, a/k/a Sapulpa Middle School, Dr. Charles B. Dodson, and Suzanne Williams as set forth above were wilful, malicious and grossly negligent, such that punitive damages should be imposed.

WHEREFORE, Plaintiffs request damages in excess of $10,000.00, plus punitive damages together with interest and costs of this action, plus what other further relief this Court deems equitable and just.

/s/ Thomas S. Evans
Thomas S. Evans OBA# 10642
EVANS LAW CENTER
Attorney for the Plaintiff
P.O. Box 2646
Ponca City, OK 74602
(405) 762-2889

RESPONDENTS' APPENDIX B

IN THE SUPREME COURT OF THE
STATE OF OKLAHOMA

CLARA REDDING, individually and as legal guardian of PATRICK LOUIS BELL, a minor, Plaintiff, vs. INDPENDENT SCHOOL DISTRICT NO. 33 OF CREEK COUNTY, OKLAHOMA, a/k/a BOARD OF EDUCATION, SAPULPA SCHOOL DISTRICT, STATE OF OKLAHOMA, a/k/a SAPULPA MIDDLE SCHOOL; TIMOTHY LYNN HOPPE, an individual; DR. CHARLES B. DODSON; SUZANNE WILLIAMS; and JANE and JOHN DOES 1-25 Defendants.	Creek County Case No. CJ 94-569 Supreme Court Case No. 86,561

AMENDED PETITION IN ERROR (AND PRELIMINARY STATEMENT)

(Filed Dec. 19, 1995)

___ Petition in Error ___ Cross-Petition

X Amended Petition ___ Counter-Petition

If the petition is an amended petition, state purpose of amendment: As directed by this Court, a certified copy of final Journal Entry of Judgment is attached as Exhibit "A".

If the petition is a cross-petition or counter-petition, state the date that the original petition in error in the appeal was filed with the Clerk of this Court:

Type of Case in Supreme Court:

- X Judgment or Final Order of District Court (Rule 1.10)
- ___ Corp. Commission (Oil & Gas) (Rule 1.85)
- ___ Corp. Commission (Utility) (Rule 1.85)
- ___ Insurance Dept. (Rule 1.55)
- ___ Tax Commission (Rule 1.125)
- ___ Court of Tax Review (Rule 1.140)
- ___ Banking Board or Commissioner (Rule 1.155)
- ___ Other

A. TRIAL COURT HISTORY

COURT/TRIBUNAL:	District Court
COUNTY:	Creek
CASE NO.:	CJ-94-569
JUDGE:	Honorable Donald D. Thompson

ALL QUESTIONS MUST BE ANSWERED

DATE OF JUDGMENT OR ORDER APPEALED PRONOUNCED: October 23, 1995

DATE THE JUDGMENT OR ORDER WAS FILED: October 23, 1995

WAS APPELLANT OR APPELLANT'S ATTORNEY PRESENT WHEN THE JUDGMENT OR ORDER WAS PRONOUNCED? __ Yes X No.

WAS A PARTY OR CLERK DIRECTED TO MAIL A COPY OF THE JUDGMENT OR ORDER TO THE APPELLANT? X Yes __ No

IF MAILING A COPY OF THE JUDGMENT OR ORDER WAS DIRECTED DOES THE TRIAL COURT RECORD SHOW THAT THE JUDGMENT OR ORDER WAS MAILED TO THE APPELLANT WITHIN FIVE (5) DAYS OF THE DATE THE JUDGMENT OR ORDER WAS FILED? X Yes __ No. IF MAILING WAS ORDERED, ON WHAT DATE WAS THE ORDER MAILED TO THE APPELLANT?

BY DISTRICT COURT CLERK:

BY OTHER PARTIES

1. N/A _____

Dated Mailed. Name of party who mailed the order.

2. N/A _____

List all parties who mailed a copy of the order or judgment to the appellant and the dates mailed by each of those parties as reflected by the proof of service filed with the District Court Clerk.

POST-TRIAL MOTIONS

	Type of Authority	Date Filed in Trial Court
1.	N/A	_____

DATE OF DISPOSITION OF POST-TRIAL MOTION OR MOTIONS

	Type	Dated Disposed in Trial Court
1.	____	_____

B. DISPOSITION OF TRIAL COURT OR TRIBUNAL

NATURE OF JUDGMENT OR ORDER APPELLANT SEEKS TO REVERSE: Order granting Defendant/Appellee's Motion for Summary Judgment

RELIEF SOUGHT BY APPELLANT IN TRIAL COURT OR TRIBUNAL: Order granting Defendant/Appellee's Motion for Summary Judgment

RELIEF GRANTED BY THE TRIAL COURT OR TRIBUNAL: None

RELIEF SOUGHT BY APPELLEE IN TRIAL COURT OR TRIBUNAL: None

RELIEF GRANTED BY TRIAL COURT OR TRIBUNAL: None

JUDGMENT ON LESS THAN ALL CLAIMS OR PARTIES:

DID THE TRIAL COURT ADJUDICATE LESS THAN ALL OF THE CLAIMS OR PARTIES PRESENTED?

___ Yes X No. IF SO, DID THE TRIAL COURT MAKE AN EXPRESS DETERMINATION THAT LESS THAN ALL OF THE CLAIMS OR PARTIES PRESENTED SHOULD BE DECIDED AND EXPRESSLY DIRECT THE FILING OF A FINAL JUDGMENT? ___ Yes ___ No.

C. SUMMARY OF CASE

Exhibit "B" attached.

D. ISSUE AND ERRORS PROPOSED TO BE RAISED ON APPEAL

State with specificity each point of law urged as error.

See Exhibit "C" attached hereto.

ANY RELATED OR PRIOR APPEALS: ___ Yes X No.

If so, identify by style, citation if any, and Supreme Court Number.

CHECK THE APPLICABLE ISSUES INVOLVED IN THE APPEAL:

___ 01 Administrative Law and Procedure
___ 02 Appeal and Error
___ 03 Attorneys
___ 04 Bankruptcy
___ 05 Banks and Banking
___ 06 Bond Forfeitures
___ 07 U.C.C.
___ 08 Constitutional Law
___ 09 Contracts
___ 10 Corporation Commission
___ 11 Corporations & Partnerships
___ 12 Courts
___ 13 Damages

___ 14 Estates, Trusts, & Guardianships
___ 15 Family Law
___ 16 Insurance
___ 17 Labor Law
___ 18 Manufacturer's & Products Liability
___ 19 Oil & Gas Law
X 20 Procedure
___ 21 Property Law
___ 22 Schools & School Districts
___ 23 Taxation
X 24 Torts
___ 25 (No number 25)
___ 26 Water Law
___ 27 Government
___ 28 42 U.S.C. Section 1983
___ 29 Jurisdiction & Venue
___ 30 Elections/Initiative Petitions
___ 31 Prisoners
___ 32 Arbitration
___ 33 Securities
___ 34 Consumer Law
___ 35 Patents & Trademarks
___ 36 Indian Law
___ 37 Municipal Law
X 38 Governmental Tort Claims Act
___ 39 Garnishment & Execution
___ 40 Discovery
___ 41 Licenses
___ 42 Evidence
___ 43 Guaranty & Suretyships
___ 44 Liens, Mortgages & Notes
___ 45 Interest
X 46 Parties to a law suit

List by general topic as set forth above any other issues involved in this appeal: N/A

E. ALL APPELLANTS MUST SHOW HOW THE APPEAL IS TIMELY BROUGHT.

I. JUDGMENT AND FINAL ORDERS OF THE DISTRICT COURT

THE APPEAL FROM THE JUDGMENT OR FINAL ORDER HEREIN IS TIMELY BROUGHT BECAUSE:

1. THE PETITION IN ERROR WAS DELIVERED TO THE CLERK OF THE SUPREME COURT WITHIN THIRTY DAYS OF THE DATE THE JUDGMENT OR FINAL ORDER WAS:

X A. FILED WITH THE DISTRICT COURT CLERK, OR

__ B. MAILED TO THE APPELLANT BY THE DISTRICT COURT CLERK OR ANOTHER PARTY AND THE COURT RECORDS DO NOT REFLECT THE MAILING OF A COPY OF THE JUDGMENT WITHIN FIVE DAYS OF ITS FILING, OR

2. THE AMENDED PETITION IN ERROR WAS HAND DELIVERED TO THE CLERK OF THE SUPREME COURT, ON December 18, 1995 AND THE STATED DATE OF MAILING WAS WITHIN THIRTY DAYS OF:

X A. THE DATE THE JUDGMENT WAS FILED WITH THE DISTRICT COURT CLERK, OR

__ B. THE DATE THE JUDGMENT WAS MAILED TO THE APPELLANT BY THE DISTRICT COURT CLERK OR ANOTHEK PARTY AND THE COURT RECORDS DO NOT REFLECT THE MAILING OF A COPY OF THE JUDGMENT WITHIN FIVE DAYS OF ITS FILING, OR

3. _____

(If 1 or 2 does not apply, explain with citation to authority how appeal is timely).

F. **IS APPELLANT WILLING TO PARTICIPATE IN AN ATTEMPTED SETTLEMENT OF THE APPEAL BY PREDECISIONAL CONFERENCE UNDER COURT OF APPEALS RULE 3.7 IF OFFERED THE OPPORTUNITY? X Yes __ No.**

G. **IF [sic] APPELLANT AGREEABLE TO ACCELERATE PROCEDURES FOR THIS APPEAL UNDER COURT RULES? X Yes __ No.**

(1) If not agreeable, why not? **N/A.**

H. **NAME OF COUNSEL.**

ATTORNEYS FOR APPELLANT:

Thomas S. Evans, OBA #10642
EVANS LAW CENTER
P.O. Box 2646
Ponca City, OK 74602
(405) 762-2889

ATTORNEY FOR APPELLEE:

Jerry A. Richardson
ROSENSTEIN, FIST & RINGOLD
525 South Main, Suite 700
Tulsa, OK 74103
(918)

I. **DATE: December 18, 1995. Verified by:**

J. **AFFIDAVIT OF MAILING TO APPELLEE AND DISTRICT COURT CLERK ON DAY OF FILING IN SUPREME COURT.**

I hereby certify that a true and correct copy of the above and foregoing Petition in Error was mailed this

18th day of December, 1995 to Jerry A. Richardson of ROSENSTEIN, FIST & RINGOLD, 525 South Main, Suite 700, Tulsa, OK 74103 by depositing it in the U.S. Mails, postage prepaid.

I further certify that a true and correct copy of the above and foregoing Petition in Error was filed in the Office of the Court Clerk of Creek County, State of Oklahoma, on the 18th day of December, 1995.

/s/ Thomas S. Evans
Thomas S. Evans

EXHIBIT "A"

IN AND FOR THE DISTRICT COURT OF
CREEK COUNTY
STATE OF OKLAHOMA

CLARA REDDING, individually and as legal guardian of PATRICK LOUIS BELL, a minor, Plaintiff, vs. BOARD OF EDUCATION, SAPULPA SCHOOL DISTRICT, STATE OF OKLAHOMA, SAPULPA MIDDLE SCHOOL, TIMOTHY LYNN HOPPE, an individual, DR. CHARLES B. DODSON, SUZANNE WILLIAMS, DOES 1-25 Defendants.	Case No. CJ 94-569

JOURNAL ENTRY OF JUDGMENT

(Filed Dec. 13, 1995)

On October 23, 1995, this matter came on for decision on the defendants' motion to dismiss or alternative motion for summary judgment. This matter was previously argued to the court on September 25, 1995, at which time the plaintiff was represented by Thomas S. Evans of Evans Law Center and the defendants, the Sapulpa School District, Dr. Charles Dodson and Suzanne Williams (hereafter "the School District Defendants"), were represented by J. Douglas Mann of Rosenstein, Fist & Ringold. After hearing argument of counsel and reviewing the entire court file with regard to this matter, the court found as follows:

1. The School District Defendants' motion to dismiss or alternative motion for summary judgment should be treated as a motion for summary judgment.

2. The School District Defendants' motion for summary judgment should be sustained and this case should be dismissed as against the School District Defendants only for the plaintiff's failure to substantially comply with the notice requirements of 51 O.S. § 156.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the School District Defendants' motion for summary judgment is sustained.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is granted to the School District Defendants only against the plaintiff on all of the plaintiff's claims and that this case is hereby dismissed against the School District Defendants only.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the court finds that the plaintiff's claims against the School District Defendants have been fully adjudicated. The court directs the preparation and filing of this final judgment as to all of the plaintiff's claims against the School District Defendants only because the court has determined that there is no just reason for delay in the filing of a final judgment on the plaintiff's claims against the School District Defendants. This determination and directive are made pursuant to OKLA. STAT. tit. 12, § 994A (Supp. 1995).

DONALD D. THOMPSON
Judge of the District Court

APPROVED AS TO FORM:

/s/ Thomas S. Evans
Thomas S. Evans, OBA #10642
Evans Law Center
P.O. Box 2646
Ponca City, OK 74602

Attorney for Plaintiff

/s/ J. Douglas Mann
J. Douglas Mann, OBA #5663
Rosenstein, Fist & Ringold
525 South Main, Suite 700
Tulsa, Oklahoma 74103-4500

Attorneys for Defendants, the Sapulpa School District, Dr. Charles Dodson and Suzanne Williams

EXHIBIT "B"

This case arises out a [sic] sexual assault perpetrated by Timothy Lynn Hoppe, a teacher's aide employee, on Patrick Lewis [sic] Bell, a minor special education student. Defendant Hoppe has been convicted in criminal court of said sexual assault. Defendant Hoppe was an employee of the Sapulpa School District in general and specifically Sapulpa Middle School System, in Creek County, Oklahoma.

Clara Redding, is legal guardian of Patrick Lewis [sic] Bell. Plaintiff/Appellant Redding retained her first attorney of record, the law firm of Richardson, Stupes [sic] and Keating to pursue a civil action against Appellee Sapulpa School District, et al. in January of 1994. Claim was filed pursuant to O.S. 51 § 151, the Government [sic] Tort Claims Act. However, instead of Plaintiff's first attorney sending notice to the head of the particular subdivision, he sent a copy instead to Oklahoma State Attorney General's Office, pursuant to O.S. 51 § 151.

The Plaintiff/Appellant, Redding, terminated her services with the law firm of Richard [sic], Stoops and Keating, and retained Attorney Thomas S. Evans as her legal counsel. Mr. Evans continued with the case as though correct service had been delivered to the Sapulpa School District. Appellees in this matter argued that effective receipt of notice of a claim under the Government [sic] Tort Claims Act was not accomplished by the Plaintiff/Appellant. The Appellant claims that due to the large amount of correspondence and communications between the two (2) parties in this action, that the Appellees did have notice of a claim and proceeded in this case as

though good notice had been served. It was only after the statute of limitations had run under Title 51 § 151 of the Oklahoma Statutes, that Appellee Sapulpa School District, et al. claimed that service had not been issued to Appellee. Their actions clearly dictated that they were aware of a claim, and furthermore, that the Appellees had planned on defending a claim against the Sapulpa School District, et al. Actions taken by Appellees indicate they were aware of a claim. Appellee School District hired a lawyer before official notice was served and knew full well of a claim being pursued by the Appellants.

The Honorable Judge Donald D. Thompson ruled in favor of the Defendants/Appellees, Board of Education, Sapulpa School District, et al., on their Motion for Summary Judgment on October 23, 1995. The Appellants now wish to appeal such judgment for the reasons stated above.

EXHIBIT "C"

ISSUES AND ERRORS PROPOSED TO BE RAISED ON APPEAL

1. Whether compliance or substantial compliance of Notice of Claim was served on Defendant School District as per *Lucas vs. Independent Public School District No. 25*, 674 P.2d 1131.

2. Alternatively whether the statute of limitations set out in Oklahoma's Governmental Tort Claims Act apply to mentally retarded minors.